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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,683	11/09/2001	Jody J. Shapiro	1968.0030000	5864
7590 03/17/2009 Frommer Lawrence & Haug LLP 745 Fifth Avenue New York, NY 10151			EXAMINER ISMAIL, SHAWKI SAIF	
			ART UNIT 2455	PAPER NUMBER
			MAIL DATE 03/17/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

09/986,683

**Applicant(s)**

SHAPIRO, JODY J.

**Examiner**

SHAWKI S. ISMAIL

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 47-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 47-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)

Paper No(s)/Wait Date: 2/27/09

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **RESPONSE TO AMENDMENT**

1. This communication is in response to the amendments received on September 16, 2008 and the Request for Continued Examination (RCE) filed on October 7, 2008.

Claims 47, 53, 57, 61, 63 and 65 have been amended.

Claims 47-65 are pending further examination.

The IDS received on February 27, 2009 has been considered

### **New Grounds of Rejection**

2. Applicant's amendment and arguments received on September 16, 2008 have been fully considered, however they are deemed to be moot in view of the new grounds of rejection.

### **Claim Rejections - 35 USC § 103**

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 47-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hegde et al.**, (Hegde) U.S. Patent No. **6,925,495** in view of **Doty, Jr., Jr.** U.S. Patent No. **6,795,863** and in view of **Florschuetz** U.S. Patent No. **6,601,009** and further in view of **Brittingham** U.S. Publication No. **20020112052 A1**

Hegde teaches delivering on-demand content to requesting device by determining attributes of the requesting device in order to increase performance of the delivered

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content. The attributes include information relating to the operating system, media player, bandwidth parameters and the like.

Doty, Jr., Jr., Jr. teaches a system for distributing a plurality of different video data streams across a network to a plurality of client recipient computers. The system includes an encoder for encoding digitized data into a plurality of different video data stream formats and a smart server for determining when a client recipient computer accesses the e-mail system and the type of a video player residing on the client recipient computer. Once the determination has been made a cookie that contains client settings is set at the client device and an optimum video data stream format for the video player of the client recipient computer is distributed to the client recipient computer

5. As to claims 47, 53, 61 and 63, Hegde teaches a method of transferring requested media data over a network comprising:

sending a detection code to the client device (col. 10, lines 5-11, Server 605 sends code that is to be executed on the client device and used for determining basic attribute information of the client device);

detecting, at the client side, the media player information available on the client device by the detection code (col. 10, lines 5-11 and col. 10, lines 27-36, the code is used for determining basic attribute information which includes the type of player at the client device);

fetching the requested media data (col. 9, lines 17-35, CDN fetches the request media either from the CDN or from the origin server); and

transferring the requested media data suitable for the detected media player information to the client computer over the network (col. 9, lines 17-35 and col. 10, lines

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34-37, the content is customized according to the attributes of the client device and delivered to the client device).

Hegde does not explicitly teach storing at the client sides the media player information in one or more cookies, verifying that they have valid settings, sending an acknowledgment indicating that said one or more cookies are sufficient to format the requested media data and further sending said one or more cookies under a fetch request from said client device,.

Doty, Jr. teaches a system for distributing a plurality of different video data streams across a network to a plurality of client recipient computers. The system includes an encoder for encoding digitized data into a plurality of different video data stream formats and a smart server for determining when a client recipient computer accesses the e-mail system and the type of a video player residing on the client recipient computer. Once the determination has been made a cookie that contains client settings is set at the client device and an optimum video data stream format for the video player of the client recipient computer is distributed to the client recipient computer. Doty, Jr. further teaches a bandwidth detection method to be able to determine the client speed. Doty teaches that the reason for not setting a cookie here is to allow the user to see the best possible video based on his connection, which can often change depending on network traffic, time of day connecting, etc. (col. 6, line 57 – col. 7, line 21).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the teaching of Doty, Jr., Jr. into the invention of Hedge in order to be able to store information on a user's computer by a Web site so

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preferences are remembered on future requests, which will reduce processing time and increase efficiency in the overall client/server system.

Hegde in view of Doty, Jr. do not teach explicitly teach wherein the cookies also describe a connection speed and store a user preferred connection speed.

Florschuetz teaches placing on the appropriate web page at the content provider's website different hyperlinks corresponding to different possible Internet connection bandwidths. Each hyperlink, when activated ("clicked") sends information to the content provider about the user's bandwidth, and may be accompanied by a request to transfer to the user's computer specific resolution streaming media data. For example, users might be offered a choice of two different high bandwidth connections speeds, i.e., 300 Kbps and 100 Kbps, and two different low bandwidth connection speeds, i.e., 56 Kbps and 28.8 Kbps. Each hyperlink would, when activated, inform the content provider of the user's bandwidth so that the content provider's server can send to the user streaming media data with a resolution appropriate for the indicated Internet connection's bandwidth.

Alternatively, the user might first indicate their bandwidth and then be given a choice of media to download from the content provider. Optionally, the content provider's server could set a cookie on the user's computer defining the bandwidth of the user's Internet connection. By setting this cookie the user need not again indicate the bandwidth of their Internet connection when they return to the site (col. 3, lines 9-42).

Hegde in view of Doty, Jr. and further in view of Florschuetz do not explicitly indicate receiving a request for a detection code from a client device.

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Brittingham teaches a remote client computer performance/compatibility querying and certification system allows a server to remotely query a client computer over a communication network to gather performance/capability information of the client computer. The gathered performance/capability information may be used, e.g., to pre-certify the client computer before the user attempts to utilize the on-line service, to determine whether the client computer is compatible with a software product, which the user of the client computer desires to purchase on-line over the communication network, and/or to provide an expert technician information regarding the installed software/hardware components of the client computer during an on-line technical support session (refer to abstract). Brittingham further teaches wherein the remote client computer performance/compatibility querying and certification process in accordance with the principles of the present invention begins in step 201 when a user of a client computer 102 initiates a client computer certification session by establishing a communication link with the server 104, e.g., by providing the universal resource locator (URL) of the server 104 (refer to Fig. 2 and paragraph [0030]).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the teaching of Brittingham into the system of Hegde, Doty, Jr. and Florschuetz in order to allow the client to initiate the downloading of the query program. This will enable the client to commence downloading the program at a time of their convenience.

6. As to claims 48, 54, 59, 62 and 65, Hegde teaches the method of claim 47, 53, 57, 61 and 63, respectively, where in the media player information includes one or more media player types available on the client device (col. 10, lines 27-36).

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7. As to claims 49, 56, 60 and 64, Hegde teaches the method of claim 47, 53, 57 and 63, respectively, wherein the media player detection code comprises logic for a string search of mimetype (col. 10, lines 27-36, the code is used to detect what media player is available on the client device from among a plurality of media players).

8. As to claim 50, 55 and 58 Hegde teaches the method of claim 47, 53 and 57, respectively, further comprising storing the detected media player information on the client device (col. 12, lines 17-42).

9. As to claim 51 Hegde teaches the method of claim 47, further comprising conducting bandwidth measurement (col. 13, lines 12-20).

10. As to claim 52 Hegde teaches the method of claim 47, wherein the suitable media data is transcoded based on the detected media player information (col. 10, lines 30-36).

### **Response to Arguments**

11. Applicant's arguments have been fully considered however they are deemed moot in view of the new ground(s) of rejection.

### **Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawki S Ismail whose telephone number is 571-272-3985. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached at 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for



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published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Shawki S Ismail/  
Examiner, Art Unit 2455  
March 15, 2009